

S U B S T I T U T E
ORDINANCE NO. _____

AN ORDINANCE amending Chapter 8.48 of the Lincoln Municipal Code, Lincoln Smokefree Air Act by amending Section 8.48.020 to clarify the purpose statement; amending Section 8.48.090 to make a grammatical correction; amending 8.48.140 to make clerical corrections; adding a new section numbered 8.48.162 to require a proprietor to obtain a permit in order to allow smoking; amending Section 8.48.170 to provide for where a permit may be issued, to delete smoking breakrooms, and to delete affidavit requirement; adding a new section numbered 8.48.175 to require a proprietor to notify the Health Director in order to allow smoking; amending Section 8.48.180 to clarify signage requirements; adding a new section numbered 8.48.182 to provide permit information requirements; adding a new section numbered 8.48.184 to provide inspection procedures; adding a new section numbered 8.48.186 to provide for suspension, revocation of a permit; adding a new section numbered 8.48.188 to provide for a hearing; amending Section 8.48.190 to clarify enforcement procedures; repealing Sections 8.48.020, 8.48.090, 8.48.140, 8.48.170, 8.48.180, and 8.48.190 of the Lincoln Municipal Code as hitherto existing; and providing that this ordinance shall become effective July 1, 2004.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 8.48.020 of the Lincoln Municipal Code be amended to read as follows:

8.48.020 Purpose.

1 The City Council does hereby find and declare that the purpose of this Chapter is to
2 protect the health and welfare of employees and the public by requiring nonsmoking and
3 smoking areas to be separated in ~~at~~ many places of employment and public places.

4 It is therefore declared to be the public policy of this City to encourage places of
5 employment and public places to eliminate and prevent the health and safety risks posed by
6 smoking at places of employment and public places. The City Council authorizes the Health
7 Director of the Lincoln-Lancaster County Health Department and law enforcement to administer
8 and enforce this Chapter within the City of Lincoln.

9 Section 2. That Section 8.48.090 of the Lincoln Municipal Code be amended to read
10 as follows:

11 **8.48.090 Definition; Indoor Area.**

12 Indoor area shall mean ~~the~~ an area bordered on all sides by a floor to ceiling walls that are
13 ~~is~~ continuous and solid except for closeable entry/exit doors and windows.

14 Section 3. That Section 8.48.140 of the⁴ Lincoln Municipal Code be amended to
15 read as follows:

16 **8.48.140 Definition; Smoking Room.**

17 Smoking room shall mean a room designated by a proprietor ~~pursuant to Section~~
18 ~~8.48.170(4)~~ within a place of employment or public place where smoking may be allowed.

19 Section 4. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 8.48.162 to read as follows:

1 **8.48.162 Proprietor to Prohibit Smoking: Exceptions.**

2 It shall be unlawful for any proprietor of any place of employment or public place to
3 allow smoking. Smoking may be allowed in places of employment or public places designated in
4 Sections 8.48.170 and 8.48.175, when such places meet the requirements of this Chapter. A
5 permit may be issued by the Health Director as provided in Section 8.48.170.

6 Section 5. That Section 8.48.170 of the Lincoln Municipal Code be amended to read
7 as follows:

8 **8.48.170 Proprietor to Prohibit Smoking; Exceptions. Smoking Allowed by Permit.**

9 ~~(a) It shall be unlawful for a proprietor of any place regulated by this Chapter to allow~~
10 ~~smoking in any place~~ The proprietor shall obtain a permit to allow smoking in any of the
11 following places of employment or public place; ~~except as follows:~~

12 (1) In guestrooms or suites ~~may be~~ designated as an indoor area where smoking is
13 allowed, however, the number of rooms or suites designated for smoking must be reasonably
14 proportionate to the preference of the users.

15 ~~(2) At times when a scientific or analytical laboratory, governed by state or federal~~
16 ~~law, or a laboratory at a college or university approved by the Nebraska Coordinating~~
17 ~~Commission for Post Secondary Education, is conducting research into the health effects of~~
18 ~~smoking, smoking may be allowed as part of the study.~~

19 ~~(3) In an employee breakroom that has been designated as an indoor area where~~
20 ~~smoking is allowed (“smoking breakroom”) by employees, provided that the following~~
21 ~~requirements are met:~~

22 ~~—————(i) Only employees of the proprietor shall be allowed to smoke within the~~
23 ~~smoking breakroom; and~~

1 ~~_____ (ii) An employee breakroom designated for nonsmoking (“nonsmoking~~
2 ~~breakroom”) shall be provided. It shall have at least the same size and amenities as the smoking~~
3 ~~breakroom; and~~

4 ~~_____ (iii) The smoking breakroom shall not serve as a work area for any~~
5 ~~employee and no employee shall be required to enter the smoking breakroom in order to reach~~
6 ~~the employee’s work area. This prohibition shall not apply to employees providing janitorial and~~
7 ~~maintenance services within the smoking breakroom; and~~

8 ~~_____ (iv) The smoking breakroom shall be separated from the rest of the place~~
9 ~~of employment or public place, and from any other adjacent or connected place of employment or~~
10 ~~public place, by solid walls, floors, ceiling, and doors equipped with automatic closing~~
11 ~~mechanisms; and~~

12 ~~_____ (v) The smoking breakroom shall be at negative air pressure with respect~~
13 ~~to the rest of the place of employment or public place, and from any other adjacent or connected~~
14 ~~place of employment or public place, so as to prohibit the flow of air from the smoking~~
15 ~~breakroom into the place of employment or public place; and~~

16 ~~_____ (vi) The smoking breakroom’s air shall be immediately exhausted to the~~
17 ~~outside of the building by an exhaust fan rather than being recirculated within the smoking~~
18 ~~breakroom or any place of employment or public place; and~~

19 ~~_____ (vii) No person under the age of eighteen shall be allowed to enter the~~
20 ~~smoking breakroom.~~

21 (4 2) In a single smoking room within any place of employment or public place,
22 provided that it meets the following requirements:

1 (i) The smoking room shall be separated from the rest of the place of
2 employment or public place, from any other adjacent or connected place of employment or public
3 place, by solid walls, floors, ceiling, and doors equipped with automatic closing mechanisms; and

4 (ii) The smoking room shall be at negative pressure with respect to any
5 adjacent or connected place of employment or public place to prohibit the flow of air from the
6 smoking room into the nonsmoking portion of the place of employment or public place; and

7 (iii) The smoking room's air shall be immediately exhausted to the outside
8 of the building by an exhaust fan rather than being recirculated within the smoking room or any
9 place of employment or public place; and

10 (iv) The maximum size of the smoking room shall be reasonably
11 proportionate to the preference of the users of the place of employment or public place; and

12 (v) Any service or amenity which the place of employment or public place
13 chooses to provide to the public or employees within the smoking room shall also be available to
14 the public or employees in the rest of the place of employment or public place. Service or
15 amenity shall include, but is not limited to television, musical entertainment, and seating; and

16 (vi) No member of the public nor any employee shall be required to enter
17 the smoking room in order to access common areas of the place of employment or public place,
18 including but not limited to, hallways, restrooms, lobbies, and waiting rooms; and

19 (vii) No person under the age of eighteen shall be allowed to enter the
20 smoking room.

21 ~~(5) Smoking by an actor or actress as part of the character role in a theatrical~~
22 ~~production, if smoking is an integral part of the story.~~

23 (6 3) In a smoke shop, provided that it meets the following requirements:

1 (i) The smoke shop shall be separated from any other place of employment
2 or public place by solid walls, floors, ceiling, and doors equipped with automatic closing
3 mechanisms; and

4 (ii) The smoke shop shall be at negative pressure with respect to any
5 adjacent or connected place of employment or public place to prohibit the flow of air from the
6 smoke shop into another place of employment or public place; and

7 ~~(iii) The smoke shop are shall be immediately exhausted to the outside of~~
8 ~~the building by an exhaust fan rather than being recirculated within the smoke shop; and~~

9 ~~(iv iii)~~ (iii) No person under the age of eighteen shall be allowed to enter the
10 smoke shop; and

11 ~~(v iv)~~ (iv) The smoke shop shall not sell or serve alcoholic beverages.

12 (7 4) In a bar, provided that it meets the following requirements:

13 ~~(i) The licensed manager of the bar shall have placed on file in the office~~
14 ~~of the City Clerk an affidavit verifying that the gross receipts from the sale and service of food~~
15 ~~constitute less than 60% of gross receipts from all business activity conducted on the premises.~~
16 ~~If the proprietor of the bar is a different person than the licensed manager, the proprietor shall~~
17 ~~also have the duty to file the same affidavit; and~~

18 ~~_____ (ii) The affidavit(s) shall be renewed at least annually, upon the earlier of~~
19 ~~the filing of an application for renewal of the liquor license for the bar, or the filing of an~~
20 ~~application for designation of a new manager for the bar; and~~

21 ~~(iii i)~~ (iii) All employees shall have been informed of the fact that smoking is
22 permitted on the premises and that the employee will be exposed to the health risks associated
23 with smoking whether or not the employee smokes.

(iv ii) No person under the age of eighteen shall be allowed to enter a bar.

(b) The proprietor shall have an affirmative defense to any violation of this section if the proprietor (1) verbally requested a person to refrain from smoking within a public place or place of employment where smoking is prohibited; and (2) took every reasonable step to prohibit the person from smoking. "Reasonable step" shall not require the physical ejection of a person by the proprietor from the place of employment or public place.

(c) This ~~Chapter~~ section shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws.

Section 6. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding a new section numbered 8.48.175 to read as follows:

8.48.175 Smoking Allowed by Written Notification.

The proprietor shall provide written notification to the Health Director that the proprietor will be allowing smoking in any of the following places of employment or public places:

(a) At times when a scientific or analytical laboratory, governed by state or federal law, or a laboratory at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education, is conducting research into the health effects of smoking, smoking may be allowed as part of the study.

(b) Smoking by an actor or actress as part of the character role in a theatrical production, if smoking is an integral part of the story.

(c) This section shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws.

Section 7. That Section 8.48.180 of the Lincoln Municipal Code be amended to read as follows:

8.48.180 Signs Required; Requirements.

(a) If smoking is not allowed by this Chapter and/or by the proprietor, the proprietor shall post at least one sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the international no smoking symbol or only the words “no smoking,” or only the words “no smoking under penalty of law.”

(b) If smoking is allowed in conformance with this Chapter and by the proprietor within designated areas, the proprietor shall post at least one permanent sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the words “no smoking except in designated area under penalty of law,” and

(1) Each guestroom or suite designated as an indoor area where smoking is allowed shall have a permanent sign posted which indicates smoking is allowed within the guestroom or suite. The sign shall include the words “smoking allowed.” Each letter shall be one inch or larger in size. There shall be a separately posted sign on each entrance of the guestroom or suite.

(2) Each indoor area where research is being conducted, pursuant to Section ~~8.48.170(2)~~ 8.48.175, that requires a person to smoke, shall have a temporary sign posted on all entrances used by employee(s) or the public indicating that smoking is being allowed for the purposes of the research.

(3) Each ~~smoking breakroom, designated pursuant to Section 8.48.170(3), and each~~ smoking room designated, pursuant of Section ~~8.48.170(4)~~ shall have a sign posted indicating that smoking is allowed within the ~~smoking breakroom or~~ smoking room. The signs shall include the words “smoking allowed.” Each letter shall be one inch or larger in size. There shall be a separately posted sign on each entrance to the ~~smoking breakroom or~~ smoking room.

1 (c) Each indoor area where an actor or actress is to be smoking, pursuant to Section
2 8.48.175, shall have a temporary sign posted on all entrances used by employee(s) or the public
3 indicating that the actor or actress will be smoking as part of the theatrical production.

4 (d) If smoking is allowed in conformance with this Chapter and by the proprietor in a bar
5 or smoke shop in its entirety, the proprietor shall post at least one permanent sign at all entrances
6 of the bar or smoke shop used by employee(s) or the public containing only the words “smoking
7 allowed in entire establishment.”

8 ~~(e)~~ (e) Proprietors shall conspicuously post or display required signs so that the signs are
9 readily viewable by employees(s) and the public.

10 (f) In areas where a proprietor is allowing smoking pursuant to this Chapter, signs shall
11 be posted indicating that minors are not allowed in these areas. The proprietor shall post at least
12 one permanent sign at all entrances to areas where smoking is allowed containing only the words
13 “no person under the age of eighteen allowed under penalty of law”.

14 (g) All signs required by this section must be approved by the Health Department.

15 Section 8. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 8.48.182 to read as follows:

17 **8.48.182 Permit.**

18 (a) An application for a permit to allow smoking pursuant to Section 8.48.170 shall be
19 submitted to the Health Director on forms provided by the Health Director. Each application
20 shall include:

21 (1) The proprietor’s full name, mailing address, phone number, and a statement
22 identifying the proprietor;

1 (2) If the proprietor is a partnership, the name, mailing address and phone number of
2 each partner;

3 (3) The place of employment or public place's name, location, a description of the
4 indoor area to be included in the permit, and a description of the services to be provided or
5 products sold;

6 (4) A drawing with measurements of the indoor area where smoking is to be
7 allowed, including:

8 (i) For guestrooms or suites to be designated as smoking, the drawing
9 must show which guestrooms or suites will be smoking and which will be non-smoking. A list
10 of room numbers for each category (non-smoking and smoking) shall be provided.

11 (ii) For all other indoor areas where smoking is to be allowed, the drawing
12 shall include a detailed description of the ventilation system and the physical separation provided
13 by walls, floors, ceiling and doors, where required by this Chapter.

14 (5) The signature of the proprietor;

15 (6) A detailed description of how the preference of the users was determined, where
16 required by this Chapter;

17 (7) Permit fees.

18 (b) If more than one place of employment or public place is owned by a proprietor, a
19 separate application and fee shall be required for each location of the place of employment or
20 public place.

21 (c) A plan review shall be required for a new permit or a remodel of an area permitted by
22 this chapter. A plan review may not be necessary for where a place of employment or public
23 place is acquired by a new proprietor.

(d) The fees for permit(s) shall be as follows:

(1) Plan Review Fee: Per Smoking Room or Smoke Shop \$200

<u>(2) Permit Fee:</u>	<u>Initial</u>	<u>Renewal</u>
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<u>Smoking room (per room)</u>	<u>\$300</u>	<u>\$200</u>
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<u>Bar or Smoke Shop</u>	<u>\$300</u>	<u>\$200</u>
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(3) Permit Fee: For total smoking guestrooms or suites	\$300	\$200
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(4) Any new permit issued after the thirtieth of April of each calendar year shall pay

seventy percent (70%) of the yearly permit fee, the fee for plan review shall not be prorated.

Renewal of permits shall be as required in this Chapter. The fees shall be payable to the Lincoln-

Lancaster County Health Department. The Health Director shall deposit the fees at the City

Treasurer's Office. The City Treasurer shall credit the fees to the Health Fund.

(5) A proprietor who fails to renew the permit before it expires, but within thirty

days of the date of expiration shall pay a late fee of \$100.00, in addition to the renewal fee.

(6) A proprietor who fails to renew the permit before it expires and fails to renew

the permit within thirty days from the date of expiration shall pay a late fee of \$200.00, in

addition to the renewal fee.

(7) It shall be unlawful for a proprietor to continue to allow smoking within the

place of employment or public place if the proprietor fails to renew the permit before it expires.

The proprietor will be deemed to be operating without a valid permit.

(e) Upon receipt of a complete application for a new permit, completion of the plan

review, or construction, whichever is later, the Health Director shall make an inspection of the

proprietor's place of employment or public place to determine if the place of employment or

1 public place complies with the provisions of this Chapter and any other applicable law or
2 standard.

3 (1) If the results of an application and inspection of a place of employment or public
4 place comply with the provisions of this Chapter, a permit to allow smoking pursuant to Section
5 8.48.170 shall be issued within fourteen days.

6 (2) Upon receipt of an application for a permit renewal and the applicable fees, the
7 Health Director may issue the permit without conducting an inspection.

8 (3) A permit issued hereunder is strictly limited to the proprietor and the place of
9 employment or public place specified in the permit. A new proprietor of a permitted place of
10 employment or public place may temporarily use the old proprietor's permit for a period of thirty
11 days or until the new proprietor has obtained a permit, whichever occurs first.

12 (4) A permit shall be non-transferable from one proprietor to another or from one
13 place of employment or public place to another.

14 (5) Any relocation of the place of employment or public place shall require a new
15 application, with the payment of fees therefor.

16 (e) All permits granted under the provisions of this Chapter shall expire on the thirty-first
17 day of October following the date of their issuance, unless revoked prior thereto as provided in
18 this Chapter.

19 Section 9. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 8.48.184 to read as follows:

21 **8.48.184 Inspection.**

22 (a) The Health Director shall conduct an inspection of each place of employment or
23 public place before a new permit is issued.

1 (b) The Health Director shall conduct periodic inspections of each permitted place of
2 employment or public place.

3 (c) A proprietor shall permit the Health Director to inspect at any reasonable time for the
4 purpose of determining compliance with the provisions of this Chapter.

5 (d) The Health Director shall record the inspection findings on an inspection report. The
6 Health Director shall furnish a copy of the inspection report to the proprietor.

7 (e) The inspection report shall:

8 (1) Set forth specific conditions found; and

9 (2) Establish a specific and reasonable period of time for correction of violations of
10 the provisions of this Chapter, if any; and

11 (3) State that failure to correct the violations within the period of time specified may
12 result in suspension or revocation of the permit and prosecution for violation of this Chapter; and

13 (4) State that the proprietor may request a hearing before the Health Director upon
14 such inspection findings by filing a written request with the Health Director within fourteen (14)
15 days of the inspection.

16 (f) After the time period given for correction in the inspection report, the Health Director
17 shall reinspect the place of employment or public place to determine compliance.

18 (g) The completed inspection report form is a public document that shall be made
19 available for public disclosure to any person who requests it according to law.

20 Section 10. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 8.48.186 to read as follows:

1 **8.48.186 Permit: Suspension, Revocation, and Notice.**

2 (a) It shall be a condition of any permit issued under this Chapter that it may be
3 suspended or revoked by the Health Director for the violation of any of the provisions of this
4 Chapter. Any permits granted under this Chapter shall be subject to suspension or revocation in
5 the following manner:

6 (1) The Health Director shall notify the proprietor as provided in this Chapter.

7 (2) The Health Director may suspend the permit for an appropriate period of time
8 not to exceed ninety days.

9 (3) The suspension or revocation shall be effective immediately upon notice.

10 (4) The proprietor shall have a right to a hearing which the Health Director shall
11 conduct in accordance with this Chapter.

12 (5) Any proprietor who continues to allow smoking after receipt of a notice of
13 suspension or revocation will be deemed to be operating without a valid permit.

14 (6) Actions for reinstatement, hearing, or appeal shall not stay or delay the
15 suspension or revocation in any manner.

16 (b) Any proprietor whose permit has been suspended may apply for reinstatement of such
17 permit. The application shall provide the same information as for a new permit and shall also
18 include a statement signed by the proprietor that the conditions causing suspension of the permit
19 have been corrected. Any proprietor eligible for reinstatement shall pay a reinstatement fee of
20 \$150.00 in addition to any other applicable fees. The Health Director shall not reinstate the
21 permit until the reinstatement fee is paid.

22 (c) The Health Director shall inspect or review the application as for a new permit,
23 except, the Health Director shall make the inspection within three days after receiving the

1 application for reinstatement and the reinstatement fee. The Health Director shall make a
2 determination if a permit shall be reinstated within five days after receiving the application for
3 reinstatement and the reinstatement fee.

4 (d) The Health Director shall reissue or reinstate the permit if the conditions causing
5 suspension of the permit have been corrected and upon payment of any reinstatement fee
6 provided for in this Chapter.

7 (e) Any proprietor whose permit has been revoked by the Health Director will not qualify
8 for reinstatement. The proprietor must make an application for a new permit and cannot obtain a
9 new permit until at least ninety days have passed since the date of the revocation notice.

10 (f) The Health Director may serve notice as follows:

11 (1) By personal service to the proprietor; or

12 (2) By certified mail, postage prepaid, return receipt requested to the proprietor's
13 last known address.

14 (g) The person making personal service may provide a written declaration under penalty
15 of perjury identifying the person served and the time, date, and manner of service as proof of
16 service.

17 (h) If the service on a proprietor is to a person other than the proprietor, the Health
18 Director may send a copy of the notice to the proprietor by regular mail. The copy is not required
19 as part of the notice, and receipt of the copy does not affect the notice.

20 Section 11. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 8.48.188 to read as follows:

22 **8.48.188 Enforcement Hearing.**

23 (a) The Health Director shall conduct a hearing no later than:

1 (1) Three days after a request for a hearing after a suspension or revocation.

2 (2) Fourteen days after any other request.

3 (b) The Health Director may appoint a suitable hearing officer to hear the matter. Such
4 hearing officer shall make recommendations based on the evidence adduced at the hearing for the
5 Health Director's final determination of the matter.

6 (c) The hearing need not be conducted according to the technical rules relating to
7 evidence and witnesses. The person requesting the hearing and the Health Director may:

8 (1) Call and examine witnesses on any matter relevant to the issues of the hearing;

9 (2) Introduce documentary and physical evidence;

10 (3) Cross examine opposing witnesses on any matter relevant to the issues of the
11 hearing; and

12 (4) Rebut evidence.

13 (d) The Health Director may uphold, reverse, or modify the findings of the hearing
14 officer. The Health Director may also take other reasonable actions as the Health Director may
15 determine proper in relation to the request.

16 (e) The Health Director shall make a final determination within ten days after the
17 hearing.

18 (f) The Health Director's decision shall be final and binding upon the City and upon the
19 person making the request.

20 (g) Appeals:

21 (1) If the Health Director denies any application or fails or refuses to issue a permit
22 under this Chapter within forty-five days from the date of application, such decision may be
23 appealed to the district court as provided for by state law.

1 (2) Any proprietor aggrieved by a final decision of the Health Director in the
2 administration or enforcement of this Chapter may appeal such decision to the district court as
3 provided by state law.

4 Section 12. That Section 8.48.190 of the Lincoln Municipal Code be amended to
5 read as follows:

6 **8.48.190 Enforcement.**

7 The Health Director and law enforcement agencies are hereby authorized to inspect a
8 place of employment or public place, including all accounting records of a bar or smoke shop, at
9 any reasonable time to determine compliance with this Chapter.

10 Section 13. That Sections 8.48.020, 8.48.090, 8.48.140, 8.48.170, 8.48.180 and
11 8.48.190 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

12 Section 15. That the operative date of this ordinance shall be July 1, 2004.

13 Section 16. That this ordinance shall take effect and be in force from and after its
14 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2004:

Mayor